

1 THE CLERK: Criminal cause for sentencing, the
2 United States of America versus Consuelo Valencia.

3 (Interpreter Marsha Gotler sworn by the clerk.)

4 THE CLERK: I ask counsel to state your appearance.

5 MS. RYAN: Monica Ryan for the United States here
6 with Hillary Axam from the Department of Justice and Patricia
7 Sullivan is here from the Probation Department. Good
8 afternoon, Your Honor.

9 THE COURT: Good afternoon, everybody.

10 MR. WALLENSTEIN: John Wallenstein for the
11 defendant. Good afternoon, Your Honor.

12 THE COURT: We're here to sentence your client
13 today. Is there any reason why she should not be sentenced
14 today, Mr. Wallenstein?

15 MR. WALLENSTEIN: No, Your Honor.

16 THE COURT: Have you gone over the presentence
17 report with her very carefully and the addenda?

18 MR. WALLENSTEIN: Yes, sir, I have.

19 THE COURT: Since she is a Spanish speaking person,
20 tell me how you communicated this information to her.

21 MR. WALLENSTEIN: I visited with her in the jail
22 with the assistance of Jay Carlos Venant who is a court
23 certified Spanish interpreter. We spent considerable time
24 reviewing the presentence report and the memorandum which I
25 submitted to you, Your Honor. I have also had an opportunity

1 today to review with her the government's memorandum and the
2 salient points thereof and I am satisfied that my client fully
3 understands the documents that the Court has before it and the
4 ramifications of it.

5 We've gone over the guidelines, the plea proceeding
6 and the Court's promises with respect to that. I believe she
7 is fully conversant, as much as a layman can be, with all of
8 the concepts that are before Your Honor today and we've spent
9 a considerable amount of time reviewing the sentencing
10 procedures and what it means.

11 THE COURT: All right. And based upon your
12 representations, we'll go forward. I hear nothing contrary
13 from the defendant.

14 Let me tell you what I have in the file. First,
15 let's refer back to July 22nd, 2008 when I took the plea and I
16 just reviewed it again today, it's rather extensive and we
17 painstakingly addressed the matter and I accepted it. She did
18 acknowledge that the woman in question was living with her for
19 about a year and she was pregnant, she went out to work as a
20 prostitute and that she was doing that, her sons took her to
21 New York, she received monies, we spent some time talking
22 about that, the monies were for her own personal use, and I
23 did conclude by asking her whether there was any question that
24 she knew that the money came from the prostitution of this
25 woman and the defendant said yes and I accepted the plea.

1 So, in addition to the minutes of July 22nd, 2008, I
2 have as part of my sentencing folder the recommendation of the
3 Probation Department recommending 35 years of incarceration
4 and five years of supervised release and I assume that you
5 folks have seen that because it is my practice to make that
6 available to counsel.

7 MR. WALLENSTEIN: Yes, Your Honor, we have.

8 MS. RYAN: Yes, Your Honor.

9 THE COURT: We have the underlying presentence
10 report dated June 15th, 2009 and we have the addendum to that
11 presentence report addressing the issue of whether or not a
12 three level enhancement for being a so-called supervisor,
13 manager or leader of a -- that would warrant the three level
14 increase and we'll address that more specifically.

15 I have the defendant's sentencing memorandum from
16 Mr. Wallenstein and -- does it have a date on it? It was
17 filed October 14th, 2009.

18 I received today just recently a letter in Spanish
19 translated into typewritten English from the defendant and
20 that's dated October 20th.

21 Has the government seen this at all? Do you wish to
22 see it?

23 MS. RYAN: We have seen it, Your Honor, Mr. Inelli
24 gave us a copy before court today and we've had the
25 opportunity to review it.

1 THE COURT: All right, so let me take a look at it.

2 MR. WALLENSTEIN: Judge, I did not receive a copy of
3 that prior to today, although Mr. Inelli did give me a copy
4 earlier today and I have reviewed it.

5 (Pause.)

6 THE COURT: All right.

7 So, let the record reflect that I have looked at
8 this and I have it as part of my sentencing file.

9 We went through this in the past. I have a letter
10 of August 13th just telling me that she -- to inform me that
11 Mr. Wallenstein never visited her again after September 28th,
12 2008. That's apparently not the case.

13 MR. WALLENSTEIN: That is not the case.

14 THE COURT: You explained to me that you met with
15 her just recently and a number of other occasions, you
16 explained the presentence report and all of the information
17 that you articulated before me just a few minutes ago.

18 MR. WALLENSTEIN: Yes, Your Honor. We've met
19 on many, many occasions always with the assistance of
20 Mr. Venant.

21 THE COURT: Then I have a letter here dated
22 November 13th, 2008. That goes back some time. It just
23 simply talks about the need to expedite the matter, her
24 eyesight is failing, she wanted to get in touch with her
25 lawyer since she hasn't seen him since September 28th, 2008.

1 Once again, you've seen her subsequent to that date many, many
2 times.

3 MR. WALLENSTEIN: Oh, yes.

4 THE COURT: The underlying plea agreement, which
5 I indicated before I accepted, was marked Court Exhibit
6 Number One and it's dated July 22nd, 2008, it's the same time
7 that I accepted the plea, and I just want to note that it
8 estimated an advisory guideline range of 151 to 188 and at
9 that time it did set forth its contention that the defendant
10 was a manager or supervisor of a criminal activity that
11 involved five or more participants. We want to talk about
12 that a little bit more in a few moments.

13 MS. RYAN: Your Honor, just so the record is clear,
14 with respect to the plea agreement, the Court is correct that
15 the estimate with two points off for acceptance of
16 responsibility was 151 to 188 but there was some discussion
17 during the plea and at that time the parties all agreed that
18 we'd provide three points off which results in a lower range.

19 THE COURT: Right, and it would be 135 to
20 168 months.

21 MR. WALLENSTEIN: That's correct.

22 THE COURT: So, have I identified everything that I
23 should have in my file? Is there anything that inadvertently
24 may have been left off?

25 MS. RYAN: Just the government's memorandum, Your

1 Honor, which I hope you have.

2 THE COURT: Sorry, that's something I do have and
3 let me get my fingers on it.

4 Well, you know, I don't have it in my file.

5 MS. RYAN: Your Honor, I'm happy to hand you another
6 copy if you'd like.

7 THE COURT: I'm quite sure I've seen it but let me
8 take a look at it.

9 That is why we go through all these things very
10 carefully. Let me see the copy.

11 MS. RYAN: (Handing.)

12 (Pause.)

13 MR. WALLENSTEIN: While you're doing that, Judge, I
14 filed an addendum to my sentencing memorandum yesterday after
15 the government's memo.

16 THE COURT: Yes, I have that. I left it upstairs.

17 MR. WALLENSTEIN: Okay.

18 THE COURT: And it talks about restitution, seeking
19 \$75,000. I've gone over it carefully.

20 MR. WALLENSTEIN: That's the government's memo,
21 right.

22 THE COURT: This is the government's memorandum.
23 So, let me acknowledge that I had received this, I just
24 inadvertently left it upstairs because I just finished reading
25 it again.

1 And then we have here what has been handed to me by
2 Mr. Inelli, a preliminary order of forfeiture which I imagine
3 is \$75,000, am I right?

4 MS. RYAN: No, Your Honor, it is a lesser amount
5 because this is an order of forfeiture with respect to the
6 \$29,950 that was actually seized from a related co-conspirator
7 in this case and we're asking that the Court sign the order of
8 forfeiture. Should the Court impose an order of restitution,
9 these funds could be applied to that process.

10 THE COURT: Is there any question about this order
11 of forfeiture? This is the first I'm seeing it.

12 MS. RYAN: I apologize, Your Honor, I was neglectful
13 in my duties and I received it today from the people in my
14 office who handle these things.

15 THE COURT: I know nothing about it.

16 MS. RYAN: I'm happy to give the Court some
17 background if you'd like.

18 THE COURT: Where is this \$29,950?

19 MS. RYAN: It's being held by ICE, Your Honor. It
20 was seized by federal agents during the course of this case.

21 THE COURT: But that was in respect to her sons or
22 in respect to her? Was it seized from her?

23 MS. RYAN: It was not seized from her. It was
24 seized from another defendant in this case who owned and
25 operated a brothel at which the victims in this case were

1 forced to work in prostitution.

2 THE COURT: Why didn't we sign that order of
3 forfeiture during that person's sentence so it was seized from
4 him?

5 MS. RYAN: That would have been a better practice,
6 Your Honor, at that time. That defendant was being sentenced
7 much earlier than some of the other defendants in the case and
8 we thought we might be able to find more money, we thought we
9 might be able to apply it to other defendants and, candidly,
10 Your Honor, it fell off our radar screen.

11 THE COURT: All right, look, I'm uncomfortable in
12 just doing this willy-nilly at the 11th hour.

13 MS. RYAN: I understand, Your Honor. If you prefer,
14 I had extensive conversations with Ms. Nandon in my office who
15 is the expert in all things forfeiture and she explained to me
16 that while even though this money wasn't physically seized
17 from this defendant, because it was seized during the same
18 conspiracy and it involves conduct involving the same victims
19 it can still be forfeited --

20 THE COURT: I don't know that.

21 MS. RYAN: I'm happy, if the Court will permit us,
22 to provide some briefing on that and we can provide that for
23 the Court.

24 THE COURT: She's pled to one specific count.

25 MS. RYAN: That's correct, Your Honor.

1 THE COURT: And I know the government's approach is
2 that, you know, we should consider all of these other people
3 as well -- well, actually you're not taking that position.

4 MS. RYAN: We can't because of the plea agreement.

5 THE COURT: Why don't we limit the forfeiture to the
6 same plea agreement.

7 MS. RYAN: I'm happy to do that, Your Honor. I will
8 state, just for the Court's information, the count to which
9 this defendant pled guilty, Count Two, was the sex trafficking
10 of a victim identified as Jane Doe Number One and I can tell
11 the Court that Jane Doe Number One worked at the brothel from
12 which these proceeds were derived.

13 THE COURT: I don't know that.

14 MS. RYAN: So, if the Court would permit us to
15 submit a letter to that effect, I'd appreciate it.

16 THE COURT: This is somewhat far removed. She comes
17 from Mexico. You're asking that I sign a preliminary order of
18 forfeiture in respect to her sentence based upon the fact that
19 these monies were found in the possession of somebody else who
20 was previously sentenced.

21 MS. RYAN: Yes.

22 THE COURT: But somehow the government inadvertently
23 just did not attend to the forfeiture aspects of it. I'm not
24 comfortable with doing that, okay.

25 So, let's move on now. Let's make our sentencing

1 calculations. We turn to page 32.

2 The only tension I glean from the submissions
3 centers around whether there ought to be a three level
4 adjustment because the defendant allegedly managed or
5 supervised a criminal activity which involved more than five
6 individuals but that's not the case here. You're talking
7 about whether it was otherwise extensive. That five or more
8 individuals would qualify for a -- well, I think a three level
9 uptick or four level if she was also the leader I guess,
10 right, but I don't see five people here.

11 MS. RYAN: Your Honor, my reading of the guidelines
12 is that the reference to the five or more individuals involves
13 members of the criminal activity whether or not they're
14 charged along with this defendant or not. I will state for
15 the record that this defendant was charged in a multi-
16 defendant indictment which included four defendants who have
17 since pled guilty and have been convicted by the court.

18 THE COURT: That's correct.

19 MS. RYAN: Have been sentenced by the court, excuse
20 me. There are also other co-conspirators, some of --

21 THE COURT: There are all sorts of people out there
22 but I have to make a determination that she herself was a
23 manager or supervisor --

24 MS. RYAN: Yes, and we contend --

25 THE COURT: -- of five or more people and the fact

1 that you say so doesn't mean it's true.

2 MS. RYAN: No, Your Honor, I don't believe that the
3 guidelines require that she supervised five or more people.

4 THE COURT: Manager or supervisor.

5 MS. RYAN: Of a criminal activity that involved five
6 or more people, so the five people is with respect to the
7 other criminal participants. She did in fact supervise some
8 of those other people. As we noted in our submission to the
9 Court, at least two of the people who have appeared before
10 this Court she did actively supervise, they ran errands for
11 her, they drove and picked up money, they drove some of the
12 victims to various brothels. She also was in charge of
13 extensive parts of the organization.

14 THE COURT: Doesn't 3B1.1 also refer to "or
15 otherwise --

16 MS. RYAN: I'm sorry?

17 THE COURT: Isn't there an "or otherwise extensive"
18 prong to that?

19 MS. RYAN: Counsel is alerting me to application
20 note 12 that clearly states to qualify for a role adjustment
21 under Section 3B1.1, as long as someone supervised one or more
22 of the other criminal participants, they can qualify for the
23 enhancement for leadership role whether it is plus 3, 4 or 5
24 under the guideline.

25 THE COURT: It doesn't require five?

1 MS. RYAN: No, it just requires five other
2 participants to be involved in the activity such that there
3 could be a leader or a follower I suspect is the policy
4 rationale behind the guideline.

5 THE COURT: Or otherwise extensive.

6 MS. RYAN: Yes.

7 THE COURT: Would this fall under that prong?

8 MS. RYAN: Yes.

9 THE COURT: It seems to be very extensive here.

10 MS. RYAN: Absolutely.

11 THE COURT: Her involvement here with the victim
12 would then be considered in assessing whether it was otherwise
13 extensive.

14 MS. RYAN: Yes.

15 THE COURT: Supervision of the victim, you can't
16 include her as one of the five but I imagine that can be
17 considered in assessing whether or not you're dealing with
18 activity that was otherwise extensive.

19 MS. RYAN: That's correct, Your Honor.

20 MR. WALLENSTEIN: I, with respect, don't agree with
21 that. I don't disagree with the government's analysis that as
22 long as the conspiracy involves five or more people, that a
23 person who is a manager can be enhanced under 3B1.1.

24 Obviously, I dispute factually whether Ms. Valencia is in fact
25 a manager but that's not the issue now. Her supervision of

1 the victims and her interaction with the victims is not what
2 qualifies anyone for a managerial role, they have to interact
3 and supervise co-conspirators or employees of the conspiracy
4 in order for them to be considered a manager.

5 THE COURT: Here's what 3B1.1(b) says: If the
6 defendant was a manager or supervisor but not an organizer or
7 leader and the criminal activity involved five or more
8 participants or is otherwise extensive; why would not this
9 criminal activity involve five or more participants?

10 MR. WALLENSTEIN: It does. I don't dispute that
11 fact. I dispute what she did in terms of whether or not she
12 was a manager.

13 THE COURT: She has to be a manager and a supervisor
14 and the criminal activity must involve five or more
15 participants.

16 MR. WALLENSTEIN: Right.

17 THE COURT: So, a manager or supervisor would
18 qualify as long as she managed or supervised even one person.

19 MR. WALLENSTEIN: If you so find, then she
20 qualifies.

21 THE COURT: Who did she manage or supervise?

22 MS. RYAN: Your Honor, as stated in the presentence
23 report, I believe it's either paragraph 39 or --

24 THE COURT: The driver.

25 MS. RYAN: There were two other members of the

1 conspiracy that were mentioned, the drivers, yes.

2 THE COURT: How do I know that? I mean you say that
3 but how do I know that?

4 MS. RYAN: Well, Your Honor, first of all, I'll just
5 note that the defendant didn't object to any of these factual
6 assertions in the presentence report. I know from my
7 experience with this case obviously.

8 THE COURT: We're here to sentence this particular
9 person.

10 MS. RYAN: Understood.

11 THE COURT: So, you have the presentence report,
12 you're making a proffer that the government can establish that
13 if necessary.

14 MS. RYAN: Yes.

15 THE COURT: And the defendant is not challenging
16 that.

17 MS. RYAN: Correct.

18 MR. WALLENSTEIN: Well, I wouldn't say I'm not
19 challenging that. My challenge --

20 THE COURT: Do you want to have a hearing?

21 MS. RYAN: Your Honor, in her brief she admits it, I
22 think it is on page four.

23 THE COURT: Read it to me.

24 MS. RYAN: At the bottom of page four, according to
25 the filing stamp that comes across the top of the page, it is

1 the second paragraph under the section that says objections to
2 the advisory guidelines calculation, she talks about the only
3 factual assertion in the PSR to support --

4 THE COURT: Go slow.

5 MS. RYAN: I'm sorry. The only factual assertion in
6 the PSR to support this enhancement is contained within
7 paragraph 43 wherein it is alleged that Ms. Valencia employed
8 Eliu Carreto Fernandez --

9 THE COURT: You're going so fast he's questioning
10 whether or not that's true.

11 MS. RYAN: I note that he does not, however, dispute
12 the paragraphs following in 44 and 45 of the PSR which
13 references another employee effectively of this defendant,
14 Eloy Carreto Reyes. I think that's an uncontested fact.

15 THE COURT: Well, it seems that way. Is that true,
16 Mr. Wallenstein?

17 MR. WALLENSTEIN: Let me take a look, Judge, 44.

18 (Pause.)

19 MR. WALLENSTEIN: I read the assertions in the
20 presentence report with respect to Eloy Carreto Reyes in
21 paragraphs 44 and 45 to mean that he was -- the only assertion
22 here that respects my client is that Mr. Reyes worked for my
23 client for approximately four years. It then goes on to say
24 he completed many tasks for Gerardo Flores Carreto and Josue
25 Flores Carreto and that he drove the victims of Gerardo and

1 Josue, that he did things with the victims, he accompanied
2 Gerardo and he saw the victims at my client's home. That
3 doesn't mean she supervised him in any way, shape or form so I
4 saw no reason to address that.

5 THE COURT: You functioned as a good lawyer because
6 it equally can be referable to this person's activities for
7 the sons and it's not so clear that he was working at her
8 direction and involved in this criminal activity on her
9 behalf. I'm troubled by that.

10 MS. RYAN: I understand what you're saying. I can
11 represent as an officer of the court that the government has
12 information that during the course of his employment, Eloy
13 Carreto Reyes's employment by this defendant he drove her
14 personally to pick up wire remitting money that had been sent
15 from New York as part of this conspiracy. That was one of the
16 many tasks he performed. Sometimes the defendant would
17 provide him with the -- I don't know if it is a passport.

18 THE COURT: I'm not going to give any three level --
19 just the mere fact that he's acting as a chauffeur doesn't
20 satisfy me.

21 MS. RYAN: It is not a chauffeur, Your Honor. He's
22 a member of the conspiracy along with the defendant, along
23 with her sons and --

24 THE COURT: You're saying it.

25 MS. RYAN: -- he's picking up criminal proceeds

1 which is the government's main hook for this defendant's
2 culpability under the statute.

3 THE COURT: You're saying it.

4 MS. RYAN: She's admitted during her guilty plea to
5 accepting money from her sons that was sent back from New
6 York. That's all part and parcel of this.

7 THE COURT: I don't know whether she was a manager
8 or supervisor of somebody --

9 MS. RYAN: She also harbored --

10 THE COURT: Listen to me.

11 MS. RYAN: I'm sorry, Your Honor.

12 THE COURT: -- who went to pick up somebody and who
13 even got the money. It just sounds to me like he's a pick-up
14 person just picking up money.

15 MS. RYAN: The government could certainly prove
16 differently at a hearing, Your Honor.

17 THE COURT: How important are those three points to
18 you? You want to have a hearing here to establish those three
19 points, is that what you want to do? I'm not satisfied that
20 you've given me anything here that warrants it. The woman is
21 down there, she admitted to being involved with this woman,
22 that the woman went to New York, she admits that she engaged
23 in prostitution, she admits that she got proceeds from her
24 activities as a prostitute so I accepted, you know, her plea
25 but, you know, and it may well be that she's involved with

1 four or five other people, it may well be that she has all
2 sorts of managerial responsibilities but I'm obliged to
3 sentence her according to the plea so that's what I'm going to
4 do, so I'm not going to give any adjustment for role in the
5 offense.

6 That means we're dealing with an adjusted offense
7 level of 33, three levels off for acceptance, we have an
8 offense level of 30 which is still a rich offense level and
9 with a Criminal History Category of I, we're dealing with a
10 range of incarceration of, let me be precise, I think it is 97
11 to 121 months, right?

12 Okay. Are we correct about that?

13 MS. RYAN: Yes, Judge. That calculation is
14 correct, Your Honor, but to answer the Court's question about
15 whether the government would like a hearing, I'm seriously
16 considering that question at the moment because I will tell
17 the Court in all candor that when this guilty plea happened on
18 the morning that the trial was to commence the government felt
19 that the bargain -- that the benefits of the bargain that the
20 defendant received at that time, while that number was
21 acceptable, I'm having a hard time thinking that an
22 appropriate sentence is within the guideline range that the
23 Court currently calculated so I'm wondering if perhaps we
24 should have a hearing. I can bring a witness here next week
25 to have a hearing on this.

1 THE COURT: Who is that witness going to be? What
2 will that witness testify to?

3 MS. RYAN: Eloy Carreto Reyes, to the employment by
4 this defendant and the purpose of the activities that he
5 engaged in and how those were important.

6 THE COURT: He's in jail?

7 MS. RYAN: Yes, Your Honor.

8 THE COURT: He would testify presumably that she was
9 the one that instructed him and directed him to go pick up the
10 money?

11 MS. RYAN: Yes.

12 THE COURT: Mr. Wallenstein, what says you?

13 MR. WALLENSTEIN: I thought you were right when you
14 denied the three level enhancement the first time but --

15 THE COURT: I can't deny the government if the
16 government wants an opportunity to establish this.

17 MR. WALLENSTEIN: I think you can't.

18 MS. RYAN: Your Honor, I will say, I mean we could
19 have prepared for such a hearing today had we understood that
20 this was going to be -- maybe I should have brought the
21 witness.

22 THE COURT: Well, truth of the matter, look, we're
23 talking about sentencing somebody to a long period of
24 incarceration, okay. Mr. Wallenstein did pose that as a
25 singular objection.

1 MS. RYAN: Yes, he did.

2 THE COURT: So, you certainly were put on notice.

3 MS. RYAN: Yes, I was.

4 THE COURT: He was not agreeing with the fact that
5 three levels should be added.

6 MS. RYAN: Yes, Your Honor.

7 THE COURT: It's not coming out of left field.

8 MS. RYAN: No, it is not, Your Honor. I didn't mean
9 to imply that at all. I thought that the government's
10 response and our reading of the guideline made it clear that
11 she was deserving of this enhancement but I certainly
12 understand the --

13 THE COURT: If I accept everything in here,
14 she's knee deep as the matriarch and she had all these five
15 people and she was constantly doing this and she was
16 constantly supervising and managing it, I agree with you, it
17 may be the case but it is not the way the government has
18 presented her.

19 MS. RYAN: I understand, Your Honor. I will just
20 note for the record that the defendant did not argue with any
21 of those facts that the Court just recounted, her status as
22 matriarch and the otherwise extensive involvement she had in
23 the criminal activity to which she pled guilty.

24 THE COURT: Those are conclusory statements. I
25 think we should be very circumspect to make sure a proper

1 sentence is being administered in this case under the law.

2 So, if you want to have this put over to next
3 week for purposes of bringing him in here, I'll give you
4 that opportunity to do so in light of the fact that
5 Mr. Wallenstein has challenged those three levels and I think
6 the government has the right to meet that challenge by
7 introducing evidence.

8 MR. WALLENSTEIN: I don't have a problem with that,
9 assuming that I get a little bit of time to prepare for
10 cross-examination of the witness, something in the nature of
11 3500 material which I imagine is available.

12 MS. RYAN: I think you have it already, as a matter
13 of fact, we provided it in context with the course of the
14 trial.

15 MR. WALLENSTEIN: All right then, that's fine --

16 MS. RYAN: I can give you another set.

17 MR. WALLENSTEIN: -- if that's the case.

18 THE COURT: Let's set it down for the hearing.

19 Mr. Wallenstein, this it not an easy cup of tea to deal with,
20 so he wants to do the best he can as defense counsel. In the
21 course of this the record will establish that the defendant is
22 getting very effective counsel.

23 MS. RYAN: I don't dispute that, Your Honor, I
24 agree.

25 MR. WALLENSTEIN: I appreciate that.

1 THE COURT: Off the record so we can get a date for
2 this hearing off the record.

3 (Discussion held off the record.)

4 THE COURT: November 20th, three o'clock. The
5 sentence is adjourned until then.

6 THE CLERK: November 20th at three o'clock.

7 MS. RYAN: Thank you, Your Honor.

8 MR. WALLENSTEIN: Thank you, Judge.

9 (Time noted: 3:50 p.m.)

10 (End of proceedings.)

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